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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LYDIA PACHECO-CESENA,

Plaintiff,

vs.

JASON FLETCHER, ANTHONY MORGAN,
SAN LEANDRO POLICE DEPARTMENT,
CITY OF SAN LEANDRO, a Municipal
Corporation, and DOES 1 THROUGH 100,
inclusive,

Defendants.

Case No.: C 07-02974 MJJ

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT
(Local Rule 16-9)**

DATE: October 9, 2007
TIME: 2:00 P.M.
PLACE: Courtroom 11, 19th Floor, 450 Golden
Gate Ave., San Francisco, CA

The parties in the above-entitled action submit this initial Case Management Statement and Proposed Order and request the Court to adopt it as its further Case Management Order in this case.

1. Jurisdiction and Service:

This is an action based upon 42 U.S.C. § 1983, and upon art. I, Section 13 of the California Constitution. This court has jurisdiction of the claims alleged herein pursuant to 28 U.S.C. §§ 1331, 1343(3).

1 All parties have been served in this case, and an Answer to the Complaint on file herein has been
2 filed on behalf of all named parties.

3 **2. Facts:**

4 **a. Plaintiff's factual description**

5 This is an action for damages based upon the alleged violations of plaintiff's federal and
6 state constitutional rights for false arrest and the use of excessive force in effectuating plaintiff's arrest
7 and the use of excessive force upon plaintiff while she was in police custody against two San Leandro
8 police officers, the San Leandro Police Department and the City of San Leandro. The incident giving
9 rise to this action occurred on February 11, 2006, at the Manor Bowl, located at 887 Manor Blvd., in the
10 City of San Leandro, California.

11 At approximately 2:00 A.M., Officers Jason Fletcher and Anthony Morgan of the San
12 Leandro Police Department were seated in their automobile in the parking lot of the Manor Bowl. At
13 this time, they noticed a vehicle pull into the parking lot, approximately 30 feet from them, and observed
14 Lydia Pacheco-Cesena (hereinafter, "plaintiff") exit the vehicle from the front passenger's side. The
15 officers noted that plaintiff appeared to stagger. The officers called out to the plaintiff several times
16 without any response from her.

17 The officers approached plaintiff and detected a strong odor of alcohol on her breath,
18 observed that her eyes appeared blood-shot and watery, and that her gait was unsteady. After speaking
19 to the plaintiff, the officers thought that her speech was slurred. Officer Fletcher then formed the
20 opinion that plaintiff was unable to care for her own welfare and she was then placed under arrest for
21 public drunkenness (Calif. Pen, Code § 647f). Plaintiff was placed into the rear of the officers' patrol
22 car and was transported to the San Leandro Police Department Jail. Officer Fletcher reported that after
23 being placed in the patrol car, plaintiff attempted to kick out the left rear passenger window of the
24 vehicle. Officer Fletcher then immobilized the plaintiff by placing her in lap and shoulder restraints.

25 At the jail, one of the booking officers, referred to as "Jailer Thompson," noted that
26 plaintiff had heavy make-up and had swelling around her right eye. Upon her release later that day,
27 plaintiff's husband arrived at the jail to pick plaintiff up and noticed that plaintiff's face had abrasions,
28 cuts and other facial injuries. Prior to the time of her arrest, plaintiff had no injuries to her face, or any

1 other part of her body. Plaintiff complained of severe dizziness and facial and neck pain and was
2 thereafter taken by ambulance from the jail to the Eden Medical Center, Fremont, California, where she
3 obtained treatment at the emergency room, and thereafter sought medical treatment with Caroline O.
4 Garcia, M.D.

5 **b. Defendants' factual description.**

6 Defendants do not dispute the majority of the facts asserted by plaintiff herein above.
7 Specifically, defendants admit that they observed plaintiff staggering through the parking lot, with her
8 subsequently being arrested for violation of Penal Code §647(f) (drunk in public). However, at no time
9 did defendants ever use excessive force or strike plaintiff, as plaintiff has alleged. Rather, defendants
10 contend that plaintiff's injuries were the result of an earlier altercation prior to her being taken into
11 custody. That earlier altercation appears to be the subject of a call for assistance to the Police
12 Department. Similarly, individuals at the Manor Bowl have confirmed that a woman fitting plaintiff's
13 description was ejected from Manor Bowl a short time prior to defendant officers encountering plaintiff
14 in the parking lot of Manor Bowl.

15 **3. Legal Issues:**

- 16 (A) Whether there was probable cause to arrest Plaintiff;
17 (B) Whether the officers used unreasonable force in effectuating Plaintiff's arrest;
18 (C) Whether Plaintiff was subjected to unreasonable force once in custody;
19 (D) Whether Plaintiff's civil rights were violated by Defendants;
20 (E) Whether defendants are immune from liability for their actions.

21 **4. Motions:**

22 No motions have been filed to date. Plaintiff served interrogatories and requests for the
23 production of document or things, and the defendants have provided responses thereto. Plaintiff's
24 counsel have not had an opportunity to review these responses as of the date of this Statement, and
25 therefore are not now in a position to determine whether a motion to compel further answers to
26 interrogatories or further responses to the request for production is necessary.

27 Similarly, Defendants served interrogatories and requests for the production of
28 documents upon plaintiff, but plaintiff has not yet responded to these discovery requests at the present

1 time. Therefore, defendants are not now in a position to determine whether a motion to compel further
2 answers or responses to their discovery requests is necessary.

3 Defendants will file a Motion for Summary Judgment following the completion of
4 Plaintiff's and the percipient witness' depositions.

5 **5. Amendment of Pleadings:**

6 The parties do not anticipate the filing of any amended pleadings

7 **6. Evidence Preservation:**

8 There are currently no issues pertaining to evidence preservation that the parties are aware of.

9 **7. Disclosures:**

10 Plaintiff will provide the following disclosures within ten (10) days of the date of the Case
11 Management Conference:

- 12 (A) The names, addresses and telephone numbers of all persons likely to have
13 discoverable information that plaintiff may use to support her claims;
- 14 (B) Copies of all medical records;
- 15 (C) Computation of damages for medical expenses (medical bills) and for loss of
16 earnings (income tax returns for the preceding 3 years plus any documentary
17 material establishing plaintiff's claim for loss of earnings);
- 18 (D) There are no applicable insurance agreements from which satisfaction of
19 judgment can be made.

20 Defendants agree to provide the relevant disclosures as delineated within FRCP Rule 26 within
21 the time frame previously set forth in the Court's original Scheduling Order for this matter, with the
22 initial disclosures to be completed on September 25, 2006.

23 **8. Discovery:**

24 Plaintiff and Defendants agree to the following discovery plan:

- 25 (A) All non-expert discovery to be completed by August 1, 2008. In this context,
26 "completed" shall mean that all discovery shall have been conducted so that all
27 depositions have been taken and any disputes relative to discovery shall have been
28 resolved by appropriate order if necessary and, where discovery has been ordered,

the order has been obeyed. All motions to compel discovery must be noticed on the court's calendar in accordance with the local rules of this court.

(B) Initial Expert disclosures shall be completed on or before October 3, 2008, with all expert discovery completed on or by November 7, 2008.

9. Class Actions:

The parties do not anticipate any class actions in this case.

10. Related Cases:

There are no cases related to the instant action.

11. Relief:

Plaintiff seeks monetary damages only; no injunctive relief is anticipated.

12. Settlement and ADR:

The parties have agreed to a telephone settlement conference before a United States Magistrate Judge and are awaiting notification from the court as to a date for such a Settlement Conference.

13. Consent to Magistrate for All Purposes:

Plaintiff consents to referring this case to a magistrate judge for all purposes. Defendants have objected referring this case to a magistrate judge except for a settlement conference

14. Other References:

The parties do not anticipate any other references.

15. Narrowing of Issues:

Unknown at this time.

16. Expedited Schedule:

The parties are unaware of any factors requiring an expedited schedule for this matter.

17. Scheduling:

(A) All non-expert discovery shall be completed on or by August 1, 2008;

(B) All pretrial motions shall be filed on or by September 26, 2008;

(C) All hearings on pretrial motions shall be heard on or by November 14, 2008, or as otherwise set by this Court;

